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March 19, 2019

VIA ELECTRONIC MAIL AND U.S. POSTAL SERVICE

Amanda Reeder
Commission Counsel
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6700

Dear Ms. Reeder:

Pursuant to 26 NCAC 05 .0105, this is the written request of the North Carolina Sheriffs' Association to provide comment and objections to various provisions in the Proposed Readoption of Jails, Local Confinement Facilities Rules, 10A NCAC 14J, at the meeting of the Rules Review Commission on March 21, 2019.

In support of this request, the North Carolina Sheriffs' Association maintains that the proposed changes are either unclear or beyond the authority of the Division of Health Service Regulation as noted below.

1. 10A NCAC 14J .0101 Definitions

10A NCAC 14J .0101 (56) Supervision Rounds: There is an ongoing objection over the requirement to conduct "in-person" checks of inmates, even when the detention officer can physically look through a window and identify all inmates.

This proposed rule change **exceeds the authority** of the Division of Health Service Regulation and infringes on a sheriff's constitutional and statutory authority to oversee a local jail.

No modification of the proposed rule change was made to address this concern. The supervision round, as written, would require the officer to physically enter and walk through the cellblock, dayroom or dormitory. Again, this would be required even if the facility is arranged in such a manner that the detention officer can physically see all inmates without the use of an electronic device, such as a video monitor.

The sheriffs are requesting that this proposed rule change be modified so that sheriffs retain the discretion to either visually observe inmates from a



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secure location or conduct a walk through ("in-person") if the sheriff determines this is the safest method to conduct a supervision round.

2. 10A NCAC 14J .0203 Contents of Operations Manual

10A NCAC 14J .0203 (20) Suicide Prevention Program: The Division of Health Service Regulation (DHSR) has kept the use of the term suicide prevention "program" despite indicating that their intent was to require the jail to have a suicide prevention "plan" in place (and not a program). A plan is a written set of procedures a jail would follow in the event an inmate is determined to be a suicide risk, whereas a program denotes a long-term set of treatment procedures that is not defined in the rule.

Therefore, as written this proposed change is **ambiguous and unclear**. DHSR modified the proposed rule change by stating the suicide prevention program "includes identifying suicidal inmates, supervising suicidal inmates, and reviewing procedures and debriefing officers after an inmate suicide."

As the sheriffs have previously requested, the rule should state clearly suicide prevention "plan," just as the preceding section (19) discusses the requirement to have a disaster plan in place. There is no basis to call this a suicide prevention program if the intent, as previously stated by DHSR, is to require sheriffs to have a suicide prevention plan in place.

3. 10A NCAC 14J .0301 Classification System and Total Design Capacity

DHSR has not deviated from their proposed rule change that will require the jail to transfer inmates if they exceed capacity by any amount, for any duration of time.

DHSR has indicated that a sheriff will either have to transfer the overage to another county, reduce the number of SMCP inmates they are housing, or transfer the overage to the Division of Adult Correction and Juvenile Justice.

This will apply even if the jail is over capacity by one or two inmates for even one day and will also apply if the jail can accommodate the overage, such as by temporarily housing in a dormitory. This proposed rule change **exceeds the authority** of the Division of Health Service Regulation and infringes on a sheriff's constitutional and statutory authority to oversee a local jail.

The proposed rule change fails to account for circumstances where a jail may have a temporary influx of inmates, such as on a weekend when a county may experience numerous arrests. This proposed rule should be modified to state that a jail may not exceed its total design capacity by more than 10% for a period of 30 consecutive days, or some other reasonable period of time. This will alleviate the issue of the temporary influx of inmates on weekends and will allow some flexibility to account for changing inmate populations.

4. 10A NCAC 14J .0403 Fire Plan, Fire Evacuation Training, and Disaster Plan

The sheriffs opposed the requirement that 90% of jail staff participate in fire evacuation training quarterly. This 90% requirement has been removed from the proposed rule change. However, the rule now requires training as required by Section 405 of the North Carolina State Fire Code.

Under Section 405 of the Fire Code, the training must be completed on a quarterly basis on each shift. This could be interpreted as a 100% participation requirement.

Therefore, as written, this proposed rule change is **ambiguous and unclear**. The sheriffs request that this proposed rule change be modified to clarify that any staff member not able to complete the fire evacuation training during the quarterly drill shall be entitled to make up that training upon their return to work. It will be virtually impossible to comply with this rule unless such a change is made to the proposed rule.

5. 10A NCAC 14J .0601 Supervision Rounds

DHSR is not willing to deviate from their proposed rule change requiring in person checks, as noted in subparagraph 1 above discussing the definition of Supervision Rounds in 10 NCAC 14J .0101 (56). The sheriffs are requesting that this proposed rule change be modified so that sheriffs retain the discretion to either visually observe inmates from a secure location or conduct a walk through ("in-person") if the sheriff determines this is the safest method to conduct a supervision round.

6. 10A NCAC 14J .1001 Medical Plan

DHSR does not believe the proposed rule change will expand the type of health care a jail will be required to provide to inmates. The proposed rule change includes mental health care, intellectual disability care and substance abuse care as "routine care for an inmate's needs."

This proposed rule change **exceeds the authority** of the Division of Health Service Regulation and will require all local medical plans to provide as routine treatment mental health care, developmental and intellectual disability care, and substance use disorder care.

G.S. 153A-225 requires local jails to provide emergency medical care for inmates, in addition to routine medical care pursuant to a medical plan adopted by the local governing body. Such a drastic increase in the scope of medical services must be undertaken, if at all, by the General Assembly through enactment of legislation and must include adequate funding to provide such services.

7. 10A NCAC 14J .1002 Screening of Inmates

As written, this proposed rule would require an officer (in the event there are no medical personnel) to "screen" inmates for: 1) medical care needs; 2) mental health care needs; 3) developmental and intellectual disabilities; 4) substance use disorders; and 4) risk of suicide.

This proposed change is **ambiguous and unclear**. DHSR indicated previously that they would clarify in the rule what was meant by "screening" of inmates, and they have failed to provide any clarification. The proposed rule as written creates liability issues for sheriffs and does not provide clear guidance on the type of screening that is expected of sheriffs' personnel. Therefore, the sheriffs object to the proposed rule change and request that the rule remain unchanged.

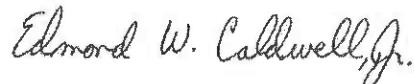
8. 10A NCAC 14J .1210 Other Areas

Outdoor Exercise Areas: The sheriffs object to the requirement that new jails and renovated jails have both indoor and outdoor exercise space. DHSR wants new jails to have both indoor and outdoor exercise space.

This proposed rule change **exceeds the authority** of the Division of Health Service Regulation. There is no constitutional or statutory requirement to provide inmates with both indoor and outdoor exercise space. The decision on whether to provide both indoor and outdoor space not only involves financial considerations, but also involves safety, supervision and staffing issues that are significant to sheriffs and the local jails many sheriffs run. Therefore, the decision on whether to provide both indoor and outdoor exercise space should be left to the local sheriff or regional jail administrator.

Thank you in advance for allowing the North Carolina Sheriffs' Association to provide oral comment on Thursday, March 21, 2019 relating to the Proposed Readoption of Jails, Local Confinement Facilities Rules contained in 10A NCAC 14J.

Sincerely,



Edmond W. Caldwell, Jr.
Executive Vice President and General Counsel
North Carolina Sheriffs' Association

Matthew Boyatt



Assistant General Counsel
North Carolina Sheriffs' Association